

HOUSE No. 4360

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 31, 2012.

The committee on Ways and Means, to whom was referred the Bill relative to land taking regulations (House, No. 4208), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4360).

For the committee,

BRIAN S. DEMPSEY.

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The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to land taking regulations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 131A of the General Laws, as appearing in the 2010 Official
2 Edition, is hereby amended by inserting, after the definition of “Plant,” the following new
3 definition:-

4 “Priority habitat,” the geographic extent of habitat for an endangered or threatened species or
5 species of special concern as delineated by the division of fisheries and wildlife based on the best
6 scientific evidence available and as set forth in section 4 for the purpose of conducting a
7 screening of a proposed project or activity to determine whether the project or activity will result
8 in a take of said species.

9 SECTION 2. Section 4 of chapter 131A of the General Laws, as so appearing, is hereby
10 amended by inserting before the last paragraph the following paragraphs:-

11 The division shall comply with the following public notice and comment requirements each time
12 it reevaluates the priority habitat map:

- (1) Upon completion of its re-evaluation of the current priority habitat map, the division shall provide a public comment period of not less than 60 days on the proposed updated priority habitat map, including all areas to be newly added as priority habitat and all areas to be removed from priority habitat.
- (2) The division shall post its proposed updated priority habitat map, together with a summary explanation of the changes to the map, on the division's website. The division's website shall include the capability to allow the public to determine whether an individual parcel of property is located within priority habitat. The division also shall publish notice of the availability of the proposed updated priority habitat map and the public comment period on the division's website, in the environmental monitor, in at least 1 newspaper with general circulation, and in other newspapers with regional or local circulation, as deemed appropriate by the division. The division shall further provide such notice to planning boards, building inspectors and conservation commissions in municipalities where existing or new priority habitats have been or are proposed to be delineated or revised.
- (3) In addition to the public notice and comment procedures in subsections (a) and (b), the division shall, to the extent reasonably practicable, send notice of the public comment period on the updated priority habitat map to the owner of any property proposed to be added as priority habitat. The division shall determine the owner of said property based on assessor records, provided, however, that the failure of the division to notify said property owner shall not affect the validity of the delineation of priority habitat on that property.
- (4) Following the close of the public comment period, the division shall evaluate the public comments received on its proposed updated priority habitat map, and shall post the final

updated priority habitat map, together with a summary response to public comments and a summary explanation of the changes to the priority habitat map, on the division's website.

(5) The division shall make available the final updated priority habitat map to the public electronically as a geographic information system data layer, as well as provide the final town-based priority map to planning boards, building inspectors and conservation commissions in all municipalities where priority habitats have been delineated.

The division shall thereafter periodically re-evaluate its priority habitat map to determine whether the map should be updated, subject to the procedural requirements in the preceding paragraph.

Priority habitat shall be used by the division for the purpose of conducting a screening of a proposed project or activity within priority habitat to determine whether the project or activity will result in the take of an endangered or threatened species or species of special concern. The division's delineation of priority habitat shall be based on the best scientific evidence available and other criteria established in regulation that may include, but not limited to, an examination of the number, location and age of individual records documenting the occurrence of a state-listed species, and a methodology that draws clear distinctions between the 3 different listing classifications of state-listed species based on the relative threat to each species classification.

Any future occurrence information submitted to the division of an endangered or threatened species or species of special concern associated with the delineation of new priority habitat added subsequent to December 31, 2012 that is found by a person on the property of another, not including property or interests in property owned by the commonwealth or its subdivisions or subject to the provisions of Article 97, shall be accompanied by a written statement made under the pains and penalties of perjury by the person who obtained the record which certifies that the entry onto the property of another was with the permission of the property owner. Nothing in the

58 preceding sentence shall modify or otherwise affect the authority of the division in section 4 of
59 chapter 131.

60 The division is authorized to require on-site or off-site mitigation as a condition of its
61 authorization of a take of an endangered or threatened species or species of special concern
62 resulting from a project or activity in priority habitat, provided however, that the scope of
63 mitigation that the division may require for projects or activities that will result in the take of a
64 species of special concern in priority habitat shall be at a value of a 1 to 1 mitigation ratio.

65 The division shall post draft conservation and management permits on its website and accept
66 public comment on said draft permits for a period of 14 calendar days. The division shall further
67 provide electronic notification of the availability of said draft permits on its website to any
68 person who requests such notification in writing to the division.

69 SECTION 3. Pursuant to section 4 of chapter 131A of the General Laws, the division of fisheries
70 and wildlife shall complete a reevaluation of the 2008 priority habitat map on or before
71 December 31, 2013.